

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR
PUERTO RICO,

As representative of

THE COMMONWEALTH OF
PUERTO RICO, THE EMPLOYEE'S
RETIREMENT SYSTEM OF THE
GOVERNMENT OF THE
COMMONWEALTH OF PUERTO
RICO, AND THE PUERTO RICO
PUBLIC BUILDINGS AUTHORITY,

Debtors.

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**OBJECTION TO MOTION IN RESPONSE TO ORDER FILED BY THE
FOMB AT DKT. NO. 19,574**

Dated: December 23, 2021

TO THE HONORABLE COURT:

COMES NOW creditor Suiza Dairy Corp. (“Suiza”), through the undersigned counsel, files this Objection to the Proposed Order for Confirmation of the Modified Eighth Amended Plan of Adjustment dated December 21, 2021 at *Dkt. 19,571* (the “Plan”).

On December 14, 2021, the Court ordered the Financial Oversight Management Board (“FOMB”) to file an amendment to the Plan in order to pay in full the Eminent Domain Claim, or Takings Claims, as constitutionally protected claims. *Dkt. 19,517*. The FOMB filed several documents in response to said order. Specifically, the FOMB filed a new Plan, an Amended Proposed Order of Confirmation and a Response to the Order. *Dkt. 19,568, 19,571 & 19,574*. The FOMB disagrees with the Court that Eminent Domain Claims are non-dischargeable, and submitted another brief basically repeating the same arguments presented before. *Dkt. 19,574*. Notwithstanding, the FOMB has agreed to pay Takings Claims in full if the Court understands that they may not be discharged. *Dkt. 19,568, 19,571 & 19,574*. As such, the FOMB modified the Plan to pay Takings Claims in full, but does not provide for full payment of Suiza’s Takings Claim. See. *Dkt. 19,568, pp. 103-104*.

Concurrently with this Objection, Suiza is filing an Objection to the Confirmation of the Modified Eighth Plan of Adjustment Dated December 21, 2021 under the following reasons:

(1) Suiza’s claim is on account of a regulatory taking pursuant to the Takings Clause of the U.S. Constitution. Therefore, the claim is non-dischargeable and may not be impaired by the Plan.

- (2) Suiza has a valid proof of claim for a “Non-Dischargeable Regulatory Accrual Claim for U.S. Constitution Violations Involving Takings Clause” that has not been objected to, and has been deemed allowed. The Plan may not change the nature of the Claim.***
- (3) The Plan unfairly discriminates against Suiza Dairy, who has not consented or voted in favor of the Plan, in as much as it is paying 100% to other takings claims and proposes to pay only 50% to Suiza Dairy.***
- (4) The Plan provides a discharge to non-debtor parties.***

Suiza adopts and incorporates all of the arguments raised therein by reference. Suiza also hereby incorporates by reference all of our prior filings, and specifically the following documents in full as if transcribed herein: *Dkts.* 17,013, 18,593, 19,651, 19,087, 19,279, 19,361, 19,397, 19,431 and 19,398 and the oral arguments raised in the hearings of July 13, 2021, November 8, 2021, November 15, 2021 and November 22, 2021. Finally, Suiza hereby incorporates by reference the Order of the Court dated December 14, 2021 at *Dkt. 19,517, Section II, pp. 6-15.*

The Plan, as filed, is in contravention of the Takings Clause of the Constitution of the United States in regards to Suiza’s claim against the Commonwealth, inasmuch as it impermissibly and unlawfully classifies and treats Suiza’s claim on account of a federal takings determination as subject to discharge under the Plan provisions. On those grounds, the Plan is unconfirmable under 11 U.S.C. §944 as incorporated by Title III of PROMESA 48 U.S.C. §§ 2161-2177 and §314(3) of Title III of PROMESA, 48 U.S.C. §2174, which requires that any plan of adjustment not be proposed in contravention of any law. In the alternative, Suiza’s claim should be allowed in its entirety as a non-dischargeable claim

against the Commonwealth and Office of the Milk Industry Regulatory Administration (“ORIL” by its Spanish acronym), one of its instrumentalities.

In the Response the FOMB does not raise any new arguments or make new allegations. So Suiza will rest on its prior filings as listed above, but will also adopt by reference the Order of the Court dated December 14, 2021 at *Dkt. 19,517, Section II, pp. 6-15* and the filing of PFZ Properties at *Dkt. 19,597*.

WHEREFORE, Suiza Dairy, Inc. most respectfully prays that the court DENY approval of the Modified Eighth Amended Plan of Adjustment as filed on December 21, 2021, absent an amendment to the same by the Commonwealth classifying Suiza’s claim as a non-dischargeable claim subject to a 100% distribution under the Plan, and surviving these proceedings, and that any third-party releases proposed in the Plan be denied.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that this motion was electronically filed with the Court using the CM/ECF system which will notify the filing by electronic means to all parties of record.

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